

Pursuant to Ind.Appellate Rule 65(D),  
this Memorandum Decision shall not be  
regarded as precedent or cited before  
any court except for the purpose of  
establishing the defense of res judicata,  
collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

**GLENN A. GRAMPP**  
Evansville, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

KHALED JAMAL ABU-TAQA,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 82A01-0704-CV-164
	)	
JESSICA LEE ABU-TAQA,	)	
	)	
Appellee-Petitioner.	)	

---

APPEAL FROM THE VANDERBURGH SUPERIOR COURT  
The Honorable Robert J. Pigman, Judge  
The Honorable Jill R. Marcum, Magistrate  
Cause No. 82D04-0602-DR-138

---

**December 11, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## **STATEMENT OF THE CASE**

Khaled Jamal Abu-Taqa (“Father”) appeals the dissolution court’s final decree granting physical custody of his two children to Jessica Lee Abu-Taqa (“Mother”).

Father presents the following issues for our review:

1. Whether the trial court abused its discretion when it awarded sole legal and physical custody of the parties’ children to Mother.
2. Whether the trial court erred when it did not include in the final decree any provision for Father and Mother to alternate claiming the children as tax exemptions.

We affirm and remand with instructions.

## **FACTS AND PROCEDURAL HISTORY**

Father and Mother were married in 2002, and they have two minor children, J.A. and A.A. In February 2006, Mother filed a petition for dissolution of marriage. The trial court issued a provisional order granting joint legal custody of the children to Father and Mother, but granting sole physical custody of the children to Mother. The trial court ordered that Father would exercise parenting time and pay Mother child support. In addition, the trial court ordered Mother to cease cohabitating with her boyfriend, Brian Birdwell.

On July 21, 2006, Mother filed a petition for an order of protection, which the trial court granted.<sup>1</sup> During the final dissolution hearing, each party sought physical custody of the children. The trial court heard evidence from several witnesses for each party. Mother presented evidence of incidents of domestic abuse involving Father. And

---

<sup>1</sup> Father has not included a copy of that petition in his Appendix. Our review of the transcript indicates that Mother filed the petition in response to an incident that occurred in April 2006, where Father poured bleach in the family minivan while the children were sitting inside of the vehicle.

Father presented evidence that Mother's boyfriend, Birdwell, was not a good influence on the children. Following the hearing, the trial court issued the final dissolution decree, which provides in relevant part that: "Mother shall have custody of the two minor children and Father shall have parenting time pursuant to the Indiana Parenting Time Guidelines. Neither party [is] to remove the children from this jurisdiction without permission from the other parent." Appellant's App. at 18. This appeal ensued.

## **DISCUSSION AND DECISION**

### **Issue One: Custody**

Initially, we note that Mother has failed to file an appellee's brief. In such a case, we need not undertake the burden of developing arguments for Wife. Butrum v. Roman, 803 N.E.2d 1139, 1142 (Ind. Ct. App. 2004), trans. denied. Applying a less stringent standard of review, we may reverse the trial court if the appellant establishes prima facie error. Id. "Prima facie" is defined as "at first sight," "on first appearance," or "on the face of it." Id.

Child custody determinations lie within the sound discretion of the trial court. Bojrab v. Bojrab, 786 N.E.2d 713, 728 (Ind. Ct. App. 2003). We will reverse the trial court's decision only if it manifestly abused its discretion. Id. An abuse of discretion occurred if the trial court's decision was clearly against the logic and effect of the facts and circumstances, or reasonable inferences therefrom, that were before the court. Id.

Father contends that the trial court abused its discretion when it awarded Mother custody of the children. In particular, Father maintains that the evidence shows that he should be awarded physical custody of the children. But Father's arguments on appeal

amount to a request that we reweigh the evidence, which we will not do. Father has not demonstrated that the trial court abused its discretion.

Indiana Code Section 31-17-2-8 provides in relevant part:

The court shall determine custody and enter a custody order in accordance with the best interests of the child. In determining the best interests of the child, there is no presumption favoring either parent. The court shall consider all relevant factors, including the following:

- (1) The age and sex of the child.
- (2) The wishes of the child's parents or parents.
- (3) The wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.
- (4) The interaction and interrelationship of the child with:
  - (A) the child's parent or parents;
  - (B) the child's sibling; and
  - (C) any other person who may significantly affect the child's best interests.
- (5) The child's adjustment to the child's:
  - (A) home;
  - (B) school; and
  - (C) community.
- (6) The mental and physical health of all individuals involved. . . .

Father does not make any argument that the trial court did not comply with the statute. Father merely contends that the trial court should have weighed the evidence in his favor. For instance, Father points out that Mother's life was unstable before their marriage and that Mother showed poor judgment when she began dating Birdwell. But there is evidence to support the trial court's custody determination. Therefore, under the abuse of discretion standard that controls our review in this appeal, we must affirm.

Father has not demonstrated that the trial court abused its discretion when it awarded Wife custody of the parties' children.

### **Issue Two: Tax Exemptions**

Father also contends that the trial court erred when it did not include in the dissolution decree any provision for Father and Mother to alternate claiming the children as tax exemptions. The transcript of the hearing on Father's motion to correct error reveals that Mother had "expressed a willingness to alternate [the exemptions]." Appellant's App. at 41. There being no evidence of a dispute between the parties on this issue, we remand to the trial court with instructions to issue an amended dissolution decree to address the tax exemptions. In particular, the order should provide that the parties will alternate years to claim the exemptions for the children and direct Mother to execute a Form 8332 (Release of Claim to Exemption for Child of Divorced or Separated Parents) in alternate years.

Affirmed and remanded with instructions.

MATHIAS, J., and BRADFORD, J., concur.